



March 30, 2007

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# ENGROSSED SENATE BILL No. 431

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DIGEST OF SB 431 (Updated March 27, 2007 1:26 pm - DI 77)

**Citations Affected:** IC 13-11; IC 13-13; IC 13-18; IC 15-3; noncode.

**Synopsis:** Confined feeding. Defines "applicant", "modification", and "responsible party" for purposes of confined feeding control statutes. Specifies that confined feeding control statutes apply to both confined feeding operations (CFOs) and concentrated animal feeding operations (CAFOs), and to both original construction and modifications. Establishes good character disclosure requirements for CFOs and CAFOs. Provides that a new CFO may not be constructed within one mile of the boundary of a school, a licensed health facility, or a municipality. Allows an expansion of an existing operation by a person who has not committed an environmental violation. Allows the department of environmental management (IDEM) to review and act  
(Continued next page)

**Effective:** Upon passage; July 1, 2007.

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**Gard, Kenley, Deig**

(HOUSE SPONSORS — PFLUM, FRIEND, GOODIN, GUTWEIN)

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January 18, 2007, read first time and referred to Committee on Energy and Environmental Affairs.

February 13, 2007, amended, reported favorably — Do Pass; reassigned to Committee on Tax and Fiscal Policy.

February 20, 2007, reported favorably — Do Pass.

February 26, 2007, read second time, amended, ordered engrossed.

February 27, 2007, engrossed. Read third time, passed. Yeas 33, nays 15.

HOUSE ACTION

March 6, 2007, read first time and referred to Committee on Agriculture and Rural Development.

March 29, 2007, amended, reported — Do Pass.

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on disclosed good character information. Establishes construction and modification fee and annual fee for CFOs and CAFOs. Establishes a confined feeding inspection fund. Requires the department of environmental management (IDEM) to establish civil penalty matrices for various categories of violations relating to CFOs. Requires IDEM to inspect a CFO at least one time each year if the owner or operator has committed a violation of environmental management laws or a rule adopted by the water pollution control board. Provides that IDEM and the environmental boards have sole regulatory authority for protection of human health and the environment concerning CFOs and CAFOs, and that political subdivisions have regulatory authority concerning CFOs and CAFOs with respect to only land use and zoning. Requires the state chemist to adopt rules relating to: (1) the use of fertilizer material and the distribution and storage of bulk commercial fertilizers; and (2) the establishment of a training and educational program for manure haulers and applicators. Requires the department of agriculture to communicate with the executive of each county to encourage the county to adopt and assist the county in adopting an ordinance to address land use and zoning issues related to CFOs. Applies certain provisions of the act to pending confined feeding projects. Makes conforming amendments.

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March 30, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 431

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 13-11-2-8, AS AMENDED BY P.L.154-2005,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2007]: Sec. 8. **(a) "Applicant", for purposes of IC 13-18-10,**  
4 **refers to a person (as defined in section 158(b) of this chapter) that**  
5 **submits an application to the department under IC 13-18-10-2.**

6 ~~(a)~~ **(b)** "Applicant", for purposes of IC 13-19-4, means an  
7 individual, a corporation, a limited liability company, a partnership, or  
8 a business association that:

9 (1) receives, for commercial purposes, solid or hazardous waste  
10 generated offsite for storage, treatment, processing, or disposal;  
11 and

12 (2) applies for the issuance, transfer, or major modification of a  
13 permit described in IC 13-15-1-3 other than a postclosure permit  
14 or an emergency permit.

15 For purposes of this subsection, an application for the issuance of a  
16 permit does not include an application for renewal of a permit.

17 ~~(b)~~ **(c)** "Applicant", for purposes of IC 13-20-2, means an

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individual, a corporation, a limited liability company, a partnership, or a business association that applies for an original permit for the construction or operation of a landfill.

~~(c)~~ **(d)** For purposes of subsection ~~(a)~~, **(b)**, "applicant" does not include an individual, a corporation, a limited liability company, a partnership, or a business association that:

- (1) generates solid or hazardous waste; and
- (2) stores, treats, processes, or disposes of the solid or hazardous waste at a site that is:
  - (A) owned by the individual, corporation, partnership, or business association; and
  - (B) limited to the storage, treatment, processing, or disposal of solid or hazardous waste generated by that individual, corporation, limited liability company, partnership, or business association.

SECTION 2. IC 13-11-2-71, AS AMENDED BY P.L.170-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 71. "Environmental management laws" refers to the following:

- (1) IC 13-12-2 and IC 13-12-3.
- (2) IC 13-13.
- (3) IC 13-14.
- (4) IC 13-15.
- (5) IC 13-16.
- (6) IC 13-17-3-15, IC 13-17-8-10, IC 13-17-10, and IC 13-17-11.
- (7) **IC 13-18-10**, IC 13-18-12, and IC 13-18-15 through IC 13-18-20.
- (8) IC 13-19-1 and IC 13-19-4.
- (9) IC 13-20-1, IC 13-20-2, IC 13-20-4 through IC 13-20-15, IC 13-20-17.7, and IC 13-20-19 through IC 13-20-21.
- (10) IC 13-22.
- (11) IC 13-23.
- (12) IC 13-24.
- (13) IC 13-25-1 through IC 13-25-5.
- (14) IC 13-27-8.
- (15) IC 13-30, except IC 13-30-1.

SECTION 3. IC 13-11-2-129.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 129.9. "Modification", for purposes of IC 13-18-10, refers to an expansion of a confined feeding operation or concentrated animal feeding operation that results in either of the following:**



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1           **(1) An increase in the confined animal capacity.**

2           **(2) An increase in the liquid manure storage capacity.**

3           SECTION 4. IC 13-11-2-164 IS AMENDED TO READ AS  
4           FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 164. (a) "Political  
5           subdivision", for purposes of IC 13-18-13, means:

6           (1) a political subdivision (as defined in IC 36-1-2);

7           (2) a regional water, sewage, or solid waste district organized  
8           under:

9           (A) IC 13-26; or

10           (B) IC 13-3-2 (before its repeal July 1, 1996); or

11           (3) a local public improvement bond bank organized under  
12           IC 5-1.4.

13           (b) "Political subdivision", for purposes of **IC 13-18-10 and**  
14           **IC 13-18-21**, means:

15           (1) a political subdivision (as defined in IC 36-1-2);

16           (2) a regional water, sewage, or solid waste district organized  
17           under:

18           (A) IC 13-26; or

19           (B) IC 13-3-2 (before its repeal July 1, 1996);

20           (3) a local public improvement bond bank organized under  
21           IC 5-1.4;

22           (4) a qualified entity described in IC 5-1.5-1-8(4) that is a public  
23           water utility described in IC 8-1-2-125; or

24           (5) a conservancy district established for the purpose set forth in  
25           IC 14-33-1-1(a)(4).

26           (c) "Political subdivision", for purposes of IC 13-19-5, has the  
27           meaning set forth in IC 36-1-2-13 and includes a redevelopment district  
28           under IC 36-7-14 or IC 36-7-15.1.

29           SECTION 5. IC 13-11-2-191 IS AMENDED TO READ AS  
30           FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 191. **(a) "Responsible**  
31           **party", for purposes of IC 13-18-10, means any of the following:**

32           **(1) An applicant referred to in IC 13-18-10-1.5(a).**

33           **(2) A person referred to in IC 13-18-10-1.5(b).**

34           **(3) An officer, a corporation director, or a senior management**  
35           **official of any of the following that is an applicant referred to**  
36           **in IC 13-18-10-1.5(a) or a person referred to in**  
37           **IC 13-18-10-1.5(b):**

38           **(A) A corporation.**

39           **(B) A partnership.**

40           **(C) A limited liability company.**

41           **(D) A business association.**

42           ~~(a)~~ **(b) "Responsible party", for purposes of IC 13-19-4, means:**

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(1) an officer, a corporation director, or a senior management official of a corporation, partnership, limited liability company, or business association that is an applicant; or

(2) an individual, a corporation, a limited liability company, a partnership, or a business association that owns, directly or indirectly, at least a twenty percent (20%) interest in the applicant.

~~(b)~~ (c) "Responsible party", for purposes of IC 13-20-6, means:

(1) an officer, a corporation director, or a senior management official of a corporation, partnership, limited liability company, or business association that is an operator; or

(2) an individual, a corporation, a limited liability company, a partnership, or a business association that owns, directly or indirectly, at least a twenty percent (20%) interest in the operator.

~~(c)~~ (d) "Responsible party", for purposes of IC 13-24-2, has the meaning set forth in Section 1001 of the federal Oil Pollution Act of 1990 (33 U.S.C. 2701).

~~(d)~~ (e) "Responsible party", for purposes of IC 13-25-6, means a person:

(1) who:

(A) owns hazardous material that is involved in a hazardous materials emergency; or

(B) owns a container or owns or operates a vehicle that contains hazardous material that is involved in a hazardous materials emergency; and

(2) who:

(A) causes; or

(B) substantially contributes to the cause of;  
the hazardous materials emergency.

SECTION 6. IC 13-13-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. The department must include the following divisions:

(1) An air pollution control division.

(2) A water pollution control division.

(3) A solid waste management division.

~~(4) A laboratory division.~~

~~(5)~~ (4) An administrative services division.

~~(6)~~ (5) A division of pollution prevention.

SECTION 7. IC 13-13-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. The:

(1) position of commissioner;

(2) highest position in each of the offices, except for the offices

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identified in:

(A) IC 13-13-3-1(1); and

(B) IC 13-13-3-1(3); and

(3) highest position in each of the divisions; ~~except for the division identified in IC 13-13-3-2(4);~~

are subject to IC 4-15-1.8.

SECTION 8. IC 13-18-10-0.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 0.4. (a) The department and the boards have sole regulatory authority for the protection of the following with respect to confined feeding operations and CAFOs:**

**(1) Human health.**

**(2) The environment.**

**(b) A political subdivision has regulatory authority for confined feeding operations and CAFOs only with respect to the following:**

**(1) Land use.**

**(2) Zoning.**

SECTION 9. IC 13-18-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) **Except as provided in subsection (b),** a person may not start construction or **modification of a confined feeding operation either of the following** without obtaining the prior approval of the department:

**(1) A confined feeding operation.**

**(2) A CAFO.**

**(b) Subject to section 1.5 of this chapter,** obtaining an NPDES permit for a CAFO meets the requirements of subsection ~~(a)~~ **(a)(2)** and 327 IAC 16 to obtain an approval.

SECTION 10. IC 13-18-10-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. (a) An applicant must include in the application the disclosure statement or statements referred to in subsection (c).**

**(b) A person that is not required to file an application for a CAFO as provided in section 1(b) of this chapter must include the disclosure statement or statements referred to in subsection (c) in:**

**(1) the application for an individual NPDES permit for the CAFO under 327 IAC 5; or**

**(2) the notice of intent filed under 327 IAC 15 for general NPDES permit coverage for the CAFO.**

**(c) A person referred to in subsection (a) or (b) must submit to the department a disclosure statement for each responsible party that includes the following:**

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(1) The name and business address of the responsible party.

(2) A description of the responsible party's experience in managing the type of facility that will be managed under the permit.

(3) A description of all pending administrative, civil, or criminal enforcement actions filed against the responsible party alleging either of the following:

(A) Acts or omissions that:

(i) constitute a material violation of a state or federal environmental law or regulation; and

(ii) present a substantial endangerment to human health or the environment.

(B) Knowing repeated violations of state or federal environmental laws or regulations that could lead to environmental harm.

(4) A description of all finally adjudicated or settled administrative, civil, or criminal enforcement actions resolved against the responsible party within the five (5) years that immediately precede the date of the application involving either of the following:

(A) Acts or omissions that:

(i) constitute a material violation of a state or federal environmental law or regulation; and

(ii) present a substantial endangerment to human health or the environment.

(B) Knowing repeated violations of state or federal environmental laws or regulations that could lead to environmental harm.

(5) Identification of all state and federal environmental permits previously denied or revoked.

(d) A disclosure statement submitted under subsection (c):

(1) must be executed under oath or affirmation; and

(2) is subject to the penalty for perjury under IC 35-44-2-1.

(e) The department may investigate and verify the information set forth in a disclosure statement submitted under subsection (b).

SECTION 11. IC 13-18-10-1.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1.7. (a) Except as provided in subsection (b), a new confined feeding operation, including a CAFO, may not be constructed if any part of a structure that is part of the operation or of a manure treatment facility that is part of the operation would be less than one (1) mile from the boundary

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of any of the following:

(1) A parcel of land on which any of the following is located:

(A) A school, other than a home school.

(B) A health facility licensed under IC 16-28.

(2) A municipality.

(b) Subsection (a) does not apply to construction that:

(1) is an expansion of an existing confined feeding operation or CAFO; and

(2) is proposed by a person that has not committed a violation of:

(A) environmental management laws; or

(B) a rule adopted by the board;

as determined by the department.

SECTION 12. IC 13-18-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) Application for approval of the construction **or modification** of a confined feeding operation **or a CAFO** must be made on a form provided by the department. An applicant must submit the completed application form to the department together with the following:

(1) Plans and specifications for the design and operation of manure treatment and control facilities.

(2) A manure management plan that outlines procedures for the following:

(A) Soil testing.

(B) Manure testing.

(3) Maps of manure application areas.

(4) Supplemental information that the department requires, including the following:

(A) General features of topography.

(B) Soil types.

(C) Drainage course.

(D) Identification of nearest streams, ditches, and lakes.

(E) Location of field tiles.

(F) Location of land application areas.

(G) Location of manure treatment facilities.

(H) Farmstead plan, including the location of water wells on the site.

(5) **Except as provided in subsection (f), a fee of one hundred dollars (\$100): one dollar (\$1).** The department shall refund the fee if the department does not make a determination in accordance with the time period established under section 2.1 of this chapter.

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**(6) The disclosure statement or statements required under section 1.5 of this chapter.**

(b) An applicant who applies for approval to construct a confined feeding operation **or a CAFO** on land that is undeveloped or for which a valid existing approval has not been issued, **or to modify a confined feeding operation or a CAFO**, shall make a reasonable effort to provide notice:

(1) to:

(A) each person who owns land that adjoins the land on which the confined feeding operation **or the CAFO** is to be located **or modified**; or

(B) if a person who owns land that adjoins the land on which the confined feeding operation **or the CAFO** is to be located **or modified** does not occupy the land, all occupants of the land; and

(2) to the county executive of the county in which the confined feeding operation **or the CAFO** is to be located **or modified**; not more than ten (10) working days after submitting an application. The notice must be sent by mail, be in writing, include the date on which the application was submitted to the department, and include a brief description of the subject of the application. The applicant shall pay the cost of complying with this subsection. The applicant shall submit an affidavit to the department that certifies that the applicant has complied with this subsection.

**(c) A person must comply with subsection (d) if:**

**(1) the person is not required to file an application as provided in section 1(b) of this chapter for construction of a CAFO:**

**(A) on land that is undeveloped; or**

**(B) for which:**

**(i) a valid existing approval has not been issued; or**

**(ii) an NPDES permit has not been obtained;**

**or for modification of a CAFO; and**

**(2) the person files:**

**(A) an application under 327 IAC 5 for an individual NPDES permit for the construction or modification of a CAFO; or**

**(B) a notice of intent under 327 IAC 15 for general NPDES permit coverage for construction or modification of a CAFO.**

**(d) A person referred to in subsection (c) shall make a reasonable effort to provide notice:**

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(1) to:

(A) each person who owns land that adjoins the land on which the CAFO is to be located or modified; or

(B) if a person who owns land that adjoins the land on which the CAFO is to be located or modified does not occupy the land, all occupants of the land; and

(2) to the county executive of the county in which the CAFO is to be located or modified;

not more than ten (10) working days after submitting an application or filing a notice of intent. The notice must be sent by mail, be in writing, include the date on which the application or notice of intent was submitted to or filed with the department, and include a brief description of the subject of the application or notice of intent. The person shall pay the cost of complying with this subsection. The person shall submit an affidavit to the department that certifies that the person has complied with this subsection.

(e) The fee for a modification of a confined feeding operation or CAFO is one dollar (\$1).

~~(e)~~ (f) Plans and specifications for manure treatment or control facilities for a confined feeding operation or a CAFO must secure the approval of the department. The department shall approve the construction and operation of the manure management system of the confined feeding operation or the CAFO if the commissioner determines that the applicant meets the requirements of:

- (1) this chapter;
- (2) rules adopted under this chapter;
- (3) the water pollution control laws;
- (4) rules adopted under the water pollution control laws; and
- (5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations or CAFOs.

SECTION 13. IC 13-18-10-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.1. (a) The department:

- (1) shall make a determination on an application not later than ninety (90) days after the date the department receives the completed application, including all required supplemental information, unless the department and the applicant agree to a longer time; ~~and~~
- (2) may conduct any inquiry or investigation, consistent with the department's duties under this chapter, the department considers necessary before making a determination; **and**

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**(3) may not approve the application if the limitation in section 1.7(a) of this chapter applies to the facility that is the subject of the application.**

(b) If the department fails to make a determination on an application not later than ninety (90) days after the date the department receives the completed application, the applicant may request and receive a refund of an approval application fee paid by the applicant, and the commissioner shall:

- (1) continue to review the application;
- (2) approve or deny the application as soon as practicable; and
- (3) refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(c) The commissioner may suspend the processing of an application and the ninety (90) day period described under this section if the department determines within thirty (30) days after the department receives the application that the application is incomplete and has mailed a notice of deficiency to the applicant that specifies the parts of the application that:

- (1) do not contain adequate information for the department to process the application; or
- (2) are not consistent with applicable law.

(d) The department may establish requirements in an approval regarding that part of the confined feeding operation **or the CAFO** that concerns manure handling and application to assure compliance with:

- (1) this chapter;
- (2) rules adopted under this chapter;
- (3) the water pollution control laws;
- (4) rules adopted under the water pollution control laws; and
- (5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations **or CAFOs**.

**(e) Subject to subsection (f), the commissioner may deny an application or require the person to apply for an individual permit under section 2.4 of this chapter upon making either of the following findings:**

- (1) A responsible party intentionally misrepresented or concealed any material fact in:**

- (A) a disclosure statement; or**
- (B) other information;**

**required by section 1.5 of this chapter.**

- (2) An enforcement action was resolved against a responsible party as described in section 1.5(c)(4) of this chapter.**

**(f) Before making a determination to approve or deny an**

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1 application or to require the person to apply for an individual  
 2 permit under section 2.4 of this chapter, the commissioner must  
 3 consider the following factors:

4 (1) The nature and details of the acts attributed to the  
 5 applicant or responsible party.

6 (2) The degree of culpability of the responsible party.

7 (3) The responsible party's cooperation with the state or  
 8 federal agencies involved in the investigation of the activities  
 9 involved in actions referred to in section 1.5(c)(4) of this  
 10 chapter.

11 (4) The responsible party's dissociation from any other  
 12 persons or entities convicted in a criminal enforcement action  
 13 referred to in section 1.5(c)(4) of this chapter.

14 (5) Prior or subsequent self-policing or internal education  
 15 programs established by the responsible party to prevent acts,  
 16 omissions, or violations referred to in section 1.5(c)(4) of this  
 17 chapter.

18 (6) Whether the best interests of the public will be served by  
 19 denial of the permit or by requiring the person to apply for an  
 20 individual permit under section 2.4 of this chapter.

21 (7) Any demonstration of good citizenship by the person or  
 22 responsible party.

23 (g) Except as provided in subsection (h), in taking action under  
 24 subsection (e), the commissioner must make separately stated  
 25 findings of fact to support the action taken. The findings of fact  
 26 must:

27 (1) include a statement of ultimate fact; and

28 (2) be accompanied by a concise statement of the underlying  
 29 basic facts of record to support the findings.

30 (h) If the commissioner denies an application under subsection  
 31 (e) or requires a person to apply for an individual permit under  
 32 section 2.4 of this chapter, the commissioner is not required to  
 33 explain the extent to which any of the factors set forth in subsection  
 34 (f) influenced the denial.

35 ~~(e)~~ (i) The department may amend an approval of an application or  
 36 revoke an approval of an application:

37 (1) for failure to comply with:

38 (A) this chapter;

39 (B) rules adopted under this chapter;

40 (C) the water pollution control laws; or

41 (D) rules adopted under the water pollution control laws; and

42 (2) as needed to prevent discharges of manure into the

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environment that pollute or threaten to pollute the waters of the state.

SECTION 14. IC 13-18-10-2.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.2. (a) If an applicant receives an approval under this chapter and completes construction, not more than thirty (30) days after the date the applicant completes the construction the applicant shall execute and send to the department an affidavit that affirms under penalties of perjury that the confined feeding operation **or CAFO**:

(1) was constructed; and

(2) will be operated;

in accordance with the requirements of the department's approval.

(b) Construction of an approved confined feeding operation **or CAFO** must:

(1) begin not later than two (2) years; and

(2) be completed not later than four (4) years;

after the date the department approves the construction of the confined feeding operation **or CAFO** or the date all appeals brought under IC 4-21.5 concerning the construction of the confined feeding operation **or CAFO** have been completed, whichever is later.

SECTION 15. IC 13-18-10-2.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.3. (a) A confined feeding operation must submit a **manure management plan to the department at least one (1) time every five (5) years.**

(b) **For purposes of this section, a manure management plan that outlines: consists of:**

(1) procedures for soil testing;

(2) **procedures for** manure testing; and

(3) maps of manure application areas. ~~to the department at least one (1) time every five (5) years to maintain valid approval for the confined feeding operation under this chapter.~~

SECTION 16. IC 13-18-10-2.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.4. (a) **The department may examine:**

(1) a notice of intent filed under 327 IAC 15 for general NPDES permit coverage for a CAFO; and

(2) the disclosure statement filed with the notice of intent under section 1.5(b)(2) of this chapter;

to determine whether there are grounds under section 2.1 of this chapter to require the person that files the notice of intent to apply for an individual permit for the CAFO under 327 IAC 5.

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1       **(b) If the department requires an application for an individual**  
 2       **permit under subsection (a), the department must provide to the**  
 3       **person the department's findings under section 2.1(e) of this**  
 4       **chapter.**

5       SECTION 17. IC 13-18-10-2.6 IS AMENDED TO READ AS  
 6       FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.6. The department  
 7       shall establish a compliance and technical assistance program for  
 8       owners and operators of confined feeding operations **and CAFOs** that  
 9       may be administered by:

- 10       (1) the department;  
 11       (2) a state college or university; or  
 12       (3) a contractor.

13       SECTION 18. IC 13-18-10-2.7 IS ADDED TO THE INDIANA  
 14       CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 15       [EFFECTIVE JULY 1, 2007]: Sec. 2.7. **(a) An annual fee of one**  
 16       **dollar (\$1) applies to confined feeding operations and CAFOs.**

17       **(b) A CAFO subject to a fee under the following is not subject**  
 18       **to NPDES permit fees under IC 13-18-20:**

- 19       (1) **This section.**  
 20       (2) **Section 2 of this chapter.**

21       **(c) The department shall deposit the fee revenue collected under**  
 22       **this section in the confined feeding operation inspection fund**  
 23       **established by section 2.8 of this chapter.**

24       SECTION 19. IC 13-18-10-2.8 IS ADDED TO THE INDIANA  
 25       CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 26       [EFFECTIVE JULY 1, 2007]: Sec. 2.8. **(a) The confined feeding**  
 27       **operation inspection fund is established to permit the department**  
 28       **to inspect confined feeding operations, including CAFOs, to**  
 29       **determine compliance with this title.**

30       **(b) The department shall administer the fund. Money in the**  
 31       **fund is annually appropriated to the department for purposes of**  
 32       **this chapter.**

33       **(c) The expenses of administering the fund shall be paid from**  
 34       **money in the fund.**

35       **(d) The treasurer of state shall invest the money in the fund not**  
 36       **currently needed to meet the obligations of the fund in the same**  
 37       **manner as other public funds may be invested.**

38       **(e) Money in the fund at the end of a fiscal year does not revert**  
 39       **to the state general fund.**

40       SECTION 20. IC 13-18-10-4 IS AMENDED TO READ AS  
 41       FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. **(a) The board may**  
 42       **adopt rules under IC 4-22-2 and IC 13-14-9 and the department may**

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adopt policies or statements under IC 13-14-1-11.5 that are necessary for the proper administration of this chapter. The rules, policies, or statements may concern construction and operation of confined feeding operations **and CAFOs** and may include uniform standards for:

(1) construction and manure containment that are appropriate for a specific site; and

(2) manure application and handling that are consistent with best management practices:

(A) designed to reduce the potential for manure to be conveyed off a site by runoff or soil erosion; and

(B) that are appropriate for a specific site.

(b) Standards adopted in a rule, policy, or statement under subsection (a) must:

(1) consider confined feeding standards that are consistent with standards found in publications from:

(A) the United States Department of Agriculture;

(B) the Natural Resources Conservation Service of the United States Department of Agriculture;

(C) the Midwest Plan Service; and

(D) university extension bulletins; and

(2) be developed through technical review by the department, university specialists, and other animal industry specialists.

SECTION 21. IC 13-18-10-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 6.5. (a) The department shall establish civil penalty matrices for the following categories:**

**(1) First time violations.**

**(2) Repeat violations.**

**(3) Intentional violators.**

**(b) The civil penalty matrices established in this section must include the following factors to determine each penalty:**

**(1) The magnitude of the violation.**

**(2) The gravity of the effect of the violation.**

**(3) The preventability of the violation.**

**(4) The actions taken to prevent or correct the violation.**

**(c) The range of the penalties for each category of the civil penalty matrix is as follows:**

**(1) First time violations, one hundred dollars (\$100) to twenty-five thousand dollars (\$25,000) for each day of violation.**

**(2) Repeat violations, five hundred dollars (\$500) to fifty thousand dollars (\$50,000) for each day of violation.**

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(3) **Intentional violators, ten thousand dollars (\$10,000) to one hundred thousand dollars (\$100,000) for each day of violation.**

SECTION 22. IC 13-18-10-6.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.7. The department shall inspect a confined feeding operation, including a CAFO, at least one (1) time each year if the department determines that the owner or operator has committed a violation of:**

(1) **environmental management laws; or**

(2) **a rule adopted by the board.**

SECTION 23. IC 13-18-20-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 12. (a) Except as provided in subsection (c), when a person files an application with the department concerning a NPDES permit, including:**

(1) an application for an initial permit;

(2) the renewal of a permit;

(3) the modification of a permit; or

(4) a variance from a permit;

the person must remit an application fee of ~~fifty~~ **seventy-five** dollars (~~\$50~~) (**\$75**) to the department.

(b) If a person does not remit an application fee to the department, the department shall deny the person's application.

(c) **This section does not apply to a person filing an application or a notice of intent for:**

(1) **an initial permit;**

(2) **renewal of a permit; or**

(3) **modification of a permit;**

**issued under 327 IAC 5 or 327 IAC 15 for an individual or general NPDES permit for a CAFO.**

(d) **A person referred to in subsection (c) is subject to fees under IC 13-18-10.**

SECTION 24. IC 15-3-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 12. The state chemist may shall** adopt rules under IC 4-22-2 relating to the use of fertilizer material and the distribution and storage of bulk commercial fertilizers to implement this chapter, including rules that set forth standards for the storage of bulk fertilizers for the purpose of protecting the waters of the state.

SECTION 25. IC 15-3-3-17.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 17.5. (a) The state chemist shall adopt rules to establish a training and educational program**

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for manure haulers and applicators concerning the application to land of manure generated from a confined feeding operation (as defined by IC 13-11-2-40), including concentrated animal feeding operations (as defined by IC 13-11-2-38.3).

(b) The program established under subsection (a) must include the following topics concerning manure hauling and application:

- (1) Manure testing.
- (2) Soil testing.
- (3) Transportation.
- (4) Manure application and handling.
- (5) Any other topics determined by the state chemist.

SECTION 26. [EFFECTIVE JULY 1, 2007] (a) Before November 1, 2007, the state chemist shall submit a report concerning the status of the manure haulers and applicators program under IC 15-3-3-17.5, as added by this act, to the general assembly in an electronic format under IC 5-14-6.

(b) This SECTION expires July 1, 2008.

SECTION 27. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "concentrated animal feeding operation" has the meaning set forth in IC 13-11-2-38.3.

(b) As used in this SECTION, "confined feeding operation" has the meaning set forth in IC 13-11-2-40.

(c) As used in this SECTION, "executive" has the meaning set forth in IC 36-1-2-5.

(d) Before January 1, 2008, the department of agriculture shall communicate with the executive of each county to:

- (1) encourage the county to adopt; and
- (2) assist the county in adopting;

an ordinance to address land use and zoning issues in the county related to concentrated animal feeding operations and confined feeding operations.

(e) This SECTION expires January 1, 2008.

SECTION 28. [EFFECTIVE UPON PASSAGE] (a) This SECTION applies notwithstanding the effective date of:

- (1) IC 13-18-10-1.5 and IC 13-18-10-2.4, both as added by this act; and
- (2) the amendments under this act to IC 13-11-2-8, IC 13-11-2-191, IC 13-18-10-1, IC 13-18-10-2, IC 13-18-10-2.1, and IC 13-18-10-2.2.

(b) The definitions in IC 13-11-2 apply in this SECTION.

(c) Subject to subsection (d), the Indiana Code sections referred to in subsection (a), as added or amended by this act, apply to the

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1 following confined feeding operations and CAFOs in the same  
 2 manner those sections would have applied if those sections had  
 3 been in effect on the date the application for the confined feeding  
 4 operation or CAFO was submitted to the department of  
 5 environmental management or the notice of intent for general  
 6 NPDES permit coverage for the CAFO was filed with the  
 7 department:

8 (1) A confined feeding operation or CAFO for which a person  
 9 is required to submit an application to the department for  
 10 approval under IC 13-18-10-1(a), as amended by this act.

11 (2) A CAFO for which a person is required to submit an  
 12 application to the department for approval of an individual  
 13 NPDES permit for the CAFO under 327 IAC 5.

14 (3) A CAFO for which a person is required to file a notice of  
 15 intent under 327 IAC 15 for general NPDES permit coverage  
 16 for the CAFO.

17 (d) Subsection (c) applies only if:

18 (1) an application referred to in subsection (c) was not  
 19 approved by the department of environmental management  
 20 before the effective date of this SECTION; or

21 (2) the date of submission of a notice of intent referred to in  
 22 subsection (c) is on or after the effective date of this  
 23 SECTION.

24 SECTION 29. [EFFECTIVE JULY 1, 2007] IC 13-18-20-11.5 IS  
 25 REPEALED.

26 SECTION 30. An emergency is declared for this act.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 431, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 13-11-2-8, AS AMENDED BY P.L.154-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) **"Applicant", for purposes of IC 13-18-10, refers to a person (as defined in section 158(b) of this chapter) that submits an application to the department under IC 13-18-10-2.**

~~(a)~~ (b) "Applicant", for purposes of IC 13-19-4, means an individual, a corporation, a limited liability company, a partnership, or a business association that:

- (1) receives, for commercial purposes, solid or hazardous waste generated offsite for storage, treatment, processing, or disposal; and
- (2) applies for the issuance, transfer, or major modification of a permit described in IC 13-15-1-3 other than a postclosure permit or an emergency permit.

For purposes of this subsection, an application for the issuance of a permit does not include an application for renewal of a permit.

~~(b)~~ (c) "Applicant", for purposes of IC 13-20-2, means an individual, a corporation, a limited liability company, a partnership, or a business association that applies for an original permit for the construction or operation of a landfill.

~~(c)~~ (d) For purposes of subsection ~~(a)~~; (b), "applicant" does not include an individual, a corporation, a limited liability company, a partnership, or a business association that:

- (1) generates solid or hazardous waste; and
- (2) stores, treats, processes, or disposes of the solid or hazardous waste at a site that is:
  - (A) owned by the individual, corporation, partnership, or business association; and
  - (B) limited to the storage, treatment, processing, or disposal of solid or hazardous waste generated by that individual, corporation, limited liability company, partnership, or business association."

Page 1, line 11, delete "IC 13-18-10.5,".

Page 2, line 6, delete "191. (a)" and insert "191. (a) **"Responsible**

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party", for purposes of IC 13-18-10, means any of the following:

- (1) An applicant referred to in IC 13-18-10-1.5(a).
- (2) A person referred to in IC 13-18-10-1.5(b).
- (3) An officer, a corporation director, or a senior management official of any of the following that is an applicant referred to in IC 13-18-10-1.5(a) or a person referred to in IC 13-18-10-1.5(b):
  - (A) A corporation.
  - (B) A partnership.
  - (C) A limited liability company.
  - (D) A business association.

~~(a)~~ (b)".

Page 2, line 7, delete "IC 13-18-10.5 and".

Page 2, line 15, strike "(b)" and insert "(c)".

Page 2, line 22, strike "(c)" and insert "(d)".

Page 2, line 25, strike "(d)" and insert "(e)".

Page 3, line 14, delete "A" and insert "Except as provided in subsection (b), a".

Page 3, line 15, strike "a confined feeding operation" and insert "either of the following".

Page 3, line 16, delete "department. IC 13-18-10.5 applies" and insert "department:

- (1) A confined feeding operation.
- (2) A CAFO."

Page 3, delete line 17.

Page 3, line 18, delete "IC 13-18-10.5," and insert "section 1.5 of this chapter,".

Page 3, line 19, strike "(a)" and insert "(a)(2)".

Page 3, between lines 20 and 21, begin a new paragraph and insert:  
 "SECTION 7. IC 13-18-10-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.5. (a) An applicant must include in the application the disclosure statement or statements referred to in subsection (c).**

**(b) A person that is not required to file an application for a CAFO as provided in section 1(b) of this chapter must include the disclosure statement or statements referred to in subsection (c) in:**

- (1) the application for an individual NPDES permit for the CAFO under 327 IAC 5; or
- (2) the notice of intent filed under 327 IAC 15 for general NPDES permit coverage for the CAFO.

**(c) A person referred to in subsection (a) or (b) must submit to**

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the department a disclosure statement for each responsible party that includes the following:

- (1) The name and business address of the responsible party.
- (2) A description of the responsible party's experience in managing the type of facility that will be managed under the permit.
- (3) A description of all pending administrative, civil, or criminal enforcement actions filed against the responsible party alleging either of the following:
  - (A) Acts or omissions to which either of the following apply:
    - (i) The acts or omissions constitute a material violation of a state or federal environmental law or regulation.
    - (ii) The acts or omissions present a substantial endangerment to human health or the environment.
  - (B) Knowing repeated violations of state or federal environmental laws or regulations that could lead to environmental harm.
- (4) A description of all finally adjudicated or settled administrative, civil, or criminal enforcement actions resolved against the responsible party within the five (5) years that immediately precede the date of the application involving either of the following:
  - (A) Acts or omissions to which either of the following apply:
    - (i) The acts or omissions constitute a material violation of a state or federal environmental law or regulation.
    - (ii) The acts or omissions present a substantial endangerment to human health or the environment.
  - (B) Knowing repeated violations of state or federal environmental laws or regulations that could lead to environmental harm.
- (5) Identification of all state and federal environmental permits previously denied or revoked.
- (d) A disclosure statement submitted under subsection (c):
  - (1) must be executed under oath or affirmation; and
  - (2) is subject to the penalty for perjury under IC 35-44-2-1.
- (e) The department may investigate and verify the information set forth in a disclosure statement submitted under subsection (b).".
 

Page 3, line 23, after "operation" insert "or a CAFO".

Page 4, line 3, delete "three" and insert "four".

Page 4, line 4, delete "(\$3,000)." and insert "(\$4,000).".

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Page 4, between lines 6 and 7, begin a new line block indented and insert:

**"(6) The disclosure statement or statements required under section 1.5 of this chapter."**

Page 4, line 8, after "operation" insert **"or a CAFO"**.

Page 4, delete lines 12 through 20, begin a new line double block indented and insert:

"(A) each person who owns land that adjoins the land on which the confined feeding operation **or the CAFO** is to be located; or

(B) if a person who owns land that adjoins the land on which the confined feeding operation **or the CAFO** is to be located does not occupy the land, all occupants of the land; and"

Page 4, line 22, after "operation" insert **"or the CAFO"**.

Page 4, line 31, after "operation" insert **"or a CAFO"**.

Page 4, line 34, after "operation" insert **"or the CAFO"**.

Page 4, line 41, delete "." and insert **"or CAFOs."**

Page 4, delete line 42, begin a new paragraph and insert:

**"SECTION 9. IC 13-18-10-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.1. (a) The department:**

(1) shall make a determination on an application not later than ninety (90) days after the date the department receives the completed application, including all required supplemental information, unless the department and the applicant agree to a longer time; and

(2) may conduct any inquiry or investigation, consistent with the department's duties under this chapter, the department considers necessary before making a determination.

(b) If the department fails to make a determination on an application not later than ninety (90) days after the date the department receives the completed application, the applicant may request and receive a refund of an approval application fee paid by the applicant, and the commissioner shall:

(1) continue to review the application;

(2) approve or deny the application as soon as practicable; and

(3) refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(c) The commissioner may suspend the processing of an application and the ninety (90) day period described under this section if the department determines within thirty (30) days after the department receives the application that the application is incomplete and has

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mailed a notice of deficiency to the applicant that specifies the parts of the application that:

- (1) do not contain adequate information for the department to process the application; or
- (2) are not consistent with applicable law.

(d) The department may establish requirements in an approval regarding that part of the confined feeding operation **or the CAFO** that concerns manure handling and application to assure compliance with:

- (1) this chapter;
- (2) rules adopted under this chapter;
- (3) the water pollution control laws;
- (4) rules adopted under the water pollution control laws; and
- (5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations **or CAFOs**.

**(e) Subject to subsections (f) and (g), the commissioner may deny an application or require the person to apply for an individual permit under section 2.4 of this chapter upon making either of the following findings:**

- (1) A responsible party intentionally misrepresented or concealed any material fact in:**
  - (A) a disclosure statement; or**
  - (B) other information;**

**required by section 1.5 of this chapter.**

- (2) An enforcement action was resolved against a responsible party as described in section 1.5(c)(4) of this chapter.**

**(f) The commissioner may not deny a permit under this section or require the person to apply for an individual permit under section 2.4 of this chapter based solely on pending actions disclosed under section 1.5(c)(3) of this chapter.**

**(g) Before making a determination to approve or deny an application or to require the person to apply for an individual permit under section 2.4 of this chapter, the commissioner must consider the following factors:**

- (1) The nature and details of the acts attributed to the applicant or responsible party.**
- (2) The degree of culpability of the responsible party.**
- (3) The responsible party's cooperation with the state or federal agencies involved in the investigation of the activities involved in actions referred to in section 1.5(c)(4) of this chapter.**
- (4) The responsible party's dissociation from any other persons or entities convicted in a criminal enforcement action**

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referred to in section 1.5(c)(4) of this chapter.

(5) Prior or subsequent self-policing or internal education programs established by the responsible party to prevent acts, omissions, or violations referred to in section 1.5(c)(4) of this chapter.

(6) Whether the best interests of the public will be served by denial of the permit or by requiring the person to apply for an individual permit under section 2.4 of this chapter.

(7) Any demonstration of good citizenship by the person or responsible party.

(h) Except as provided in subsection (i), in taking action under subsection (e), the commissioner must make separately stated findings of fact to support the action taken. The findings of fact must:

- (1) include a statement of ultimate fact; and
- (2) be accompanied by a concise statement of the underlying basic facts of record to support the findings.

(i) If the commissioner denies an application under subsection (e) or requires a person to apply for an individual permit under section 2.4 of this chapter, the commissioner is not required to explain the extent to which any of the factors set forth in subsection (g) influenced the denial.

~~(e)~~ (j) The department may amend an approval **of an application** or revoke an approval **of an application**:

- (1) for failure to comply with:
  - (A) this chapter;
  - (B) rules adopted under this chapter;
  - (C) the water pollution control laws; or
  - (D) rules adopted under the water pollution control laws; and
- (2) as needed to prevent discharges of manure into the environment that pollute or threaten to pollute the waters of the state.

SECTION 10. IC 13-18-10-2.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.2. (a) If an applicant receives an approval under this chapter and completes construction, not more than thirty (30) days after the date the applicant completes the construction the applicant shall execute and send to the department an affidavit that affirms under penalties of perjury that the confined feeding operation **or CAFO**:

- (1) was constructed; and
- (2) will be operated;

in accordance with the requirements of the department's approval.

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(b) Construction of an approved confined feeding operation **or CAFO** must:

- (1) begin not later than two (2) years; and
- (2) be completed not later than four (4) years;

after the date the department approves the construction of the confined feeding operation **or CAFO** or the date all appeals brought under IC 4-21.5 concerning the construction of the confined feeding operation **or CAFO** have been completed, whichever is later.

SECTION 11. IC 13-18-10-2.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.3. (a) A confined feeding operation must submit **a manure management plan to the department at least one (1) time every five (5) years.**

**(b) For purposes of this section, a manure management plan that outlines: consists of:**

- (1) procedures for soil testing;
- (2) procedures for** manure testing; and
- (3) maps of manure application areas. to the department at least one (1) time every five (5) years to maintain valid approval for the confined feeding operation under this chapter.**

SECTION 12. IC 13-18-10-2.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.4. (a) **The department may examine:**

- (1) a notice of intent filed under 327 IAC 15 for general NPDES permit coverage for a CAFO; and**
- (2) the disclosure statement filed with the notice of intent under section 1.5(b)(2) of this chapter;**

**to determine whether there are grounds under section 2.1 of this chapter to require the person that files the notice of intent to apply for an individual permit for the CAFO under 327 IAC 5.**

**(b) If the department requires an application for an individual permit under subsection (a), the department must provide to the person the department's findings under section 2.1(e) of this chapter.**

SECTION 13. IC 13-18-10-2.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.6. The department shall establish a compliance and technical assistance program for owners and operators of confined feeding operations **and CAFOs** that may be administered by:

- (1) the department;
- (2) a state college or university; or
- (3) a contractor.



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SECTION 14. IC 13-18-10-2.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.7. (a) The following fees payable to the department apply to confined feeding operations and CAFOs based on the indicated number of animals:**

**(1) For a confined feeding operation or a CAFO for the confined feeding of:**

**(A) at least six hundred (600) swine; and**

**(B) less than seven hundred fifty (750) swine;**

**a fee once every five (5) years in the amount of two hundred fifty dollars (\$250).**

**(2) For a confined feeding operation or a CAFO for the confined feeding of:**

**(A) more than seven hundred forty-nine (749) swine; and**

**(B) less than two thousand five hundred (2,500) swine;**

**an annual fee of three hundred dollars (\$300).**

**(3) For a confined feeding operation or a CAFO for the confined feeding of:**

**(A) more than three hundred (300) cows; and**

**(B) less than seven hundred (700) cows;**

**an annual fee of three hundred dollars (\$300).**

**(4) For a confined feeding operation or a CAFO for the confined feeding of at least two thousand five hundred (2,500) swine, an annual fee of nine hundred dollars (\$900).**

**(5) For a confined feeding operation or a CAFO for the confined feeding of at least seven hundred (700) cows, an annual fee of nine hundred dollars (\$900).**

**(6) For a confined feeding operation or a CAFO for the confined feeding of at least thirty thousand (30,000) poultry, an annual fee of nine hundred dollars (\$900).**

**(b) A CAFO subject to a fee under the following is not subject to NPDES permit fees under IC 13-18-20:**

**(1) Subsection (a).**

**(2) Section 2 of this chapter.**

SECTION 15. IC 13-18-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4. (a) The board may adopt rules under IC 4-22-2 and IC 13-14-9 and the department may adopt policies or statements under IC 13-14-1-11.5 that are necessary for the proper administration of this chapter. The rules, policies, or statements may concern construction and operation of confined feeding operations and CAFOs and may include uniform standards for:**

**(1) construction and manure containment that are appropriate for**

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a specific site; and

(2) manure application and handling that are consistent with best management practices:

(A) designed to reduce the potential for manure to be conveyed off a site by runoff or soil erosion; and

(B) that are appropriate for a specific site.

(b) Standards adopted in a rule, policy, or statement under subsection (a) must:

(1) consider confined feeding standards that are consistent with standards found in publications from:

(A) the United States Department of Agriculture;

(B) the Natural Resources Conservation Service of the United States Department of Agriculture;

(C) the Midwest Plan Service; and

(D) university extension bulletins; and

(2) be developed through technical review by the department, university specialists, and other animal industry specialists."

Delete pages 5 through 10.

Page 11, delete lines 1 through 36.

Page 12, line 7, delete "A" and insert **"This section does not apply to a"**.

Page 12, line 7, after "application" insert **"or a notice of intent"**.

Page 12, line 12, delete "CAFO shall remit the fees required under" and insert **"CAFO."**

**(d) A person referred to in subsection (c) is subject to fees under IC 13-18-10."**

Page 12, delete line 13.

Page 12, after line 20, begin a new paragraph and insert:

**"SECTION 18. [EFFECTIVE JULY 1, 2007] IC 13-18-20-11.5 IS REPEALED."**

Re-number all SECTIONS consecutively.

and when so amended that said bill be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to SB 431 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 7, Nays 0.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 431, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 431 as printed February 14, 2007.)

KENLEY, Chairperson

Committee Vote: Yeas 10, Nays 0.

## SENATE MOTION

Madam President: I move that Senator Kenley be added as second author and Senator Deig be added as third author of Senate Bill 431.

GARD

## SENATE MOTION

Madam President: I move that Senate Bill 431 be amended to read as follows:

Page 2, between lines 36 and 37, begin a new paragraph and insert:  
 "SECTION 3. IC 13-11-2-129.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 129.9. "Modification", for purposes of IC 13-18-10, refers to an expansion of a confined feeding operation or concentrated animal feeding operation that results in either of the following:**

- (1) An increase in the confined animal capacity.**
- (2) An increase in the liquid manure storage capacity.**

SECTION 4. IC 13-11-2-164 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 164. (a) "Political subdivision", for purposes of IC 13-18-13, means:

- (1) a political subdivision (as defined in IC 36-1-2);
- (2) a regional water, sewage, or solid waste district organized under:
  - (A) IC 13-26; or

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- (B) IC 13-3-2 (before its repeal July 1, 1996); or
- (3) a local public improvement bond bank organized under IC 5-1.4.
- (b) "Political subdivision", for purposes of **IC 13-18-10 and IC 13-18-21**, means:
  - (1) a political subdivision (as defined in IC 36-1-2);
  - (2) a regional water, sewage, or solid waste district organized under:
    - (A) IC 13-26; or
    - (B) IC 13-3-2 (before its repeal July 1, 1996);
    - (3) a local public improvement bond bank organized under IC 5-1.4;
    - (4) a qualified entity described in IC 5-1.5-1-8(4) that is a public water utility described in IC 8-1-2-125; or
    - (5) a conservancy district established for the purpose set forth in IC 14-33-1-1(a)(4).
  - (c) "Political subdivision", for purposes of IC 13-19-5, has the meaning set forth in IC 36-1-2-13 and includes a redevelopment district under IC 36-7-14 or IC 36-7-15.1."

Page 4, between lines 14 and 15, begin a new paragraph and insert:  
 "SECTION 7. IC 13-18-10-0.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 0.4. (a) The department and the boards have sole regulatory authority for the protection of the following with respect to confined feeding operations and CAFOs:**

- (1) Human health.**
- (2) The environment.**
- (b) A political subdivision has regulatory authority for confined feeding operations and CAFOs only with respect to the following:**
  - (1) Land use.**
  - (2) Zoning."**

Page 4, line 16, delete "JANUARY 1, 2008]:" and insert "JULY 1, 2007]:".

Page 4, line 17, after "construction" insert "**or modification**".

Page 5, line 5, delete "to which either of the following" and insert "**that:**

- (i) constitute a material violation of a state or federal environmental law or regulation; and**
- (ii) present a substantial endangerment to human health or the environment."**

Page 5, delete lines 6 through 10.

Page 5, line 19, delete "to which either of the following" and insert

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**"that:**

- (i) constitute a material violation of a state or federal environmental law or regulation; and**
- (ii) present a substantial endangerment to human health or the environment."**

Page 5, delete lines 20 through 24.

Page 5, line 37, after "construction" insert "**or modification**".

Page 6, line 17, delete "A" and insert "**Except as provided in subsection (f), a**".

Page 6, line 25, after "issued" insert ", **or to modify a confined feeding operation or a CAFO,**".

Page 6, line 29, delete ";" and insert "**or modified;**".

Page 6, line 32, after "located" insert "**or modified**".

Page 6, line 35, delete ";" and insert "**or modified;**".

Page 6, after line 42, begin a new paragraph and insert:"

**(c) A person must comply with subsection (d) if:**

- (1) the person is not required to file an application as provided in section 1(b) of this chapter for construction of a CAFO:**

- (A) on land that is undeveloped; or**

- (B) for which:**

- (i) a valid existing approval has not been issued; or**

- (ii) an NPDES permit has not been obtained;**

- or for modification of a CAFO; and**

- (2) the person files:**

- (A) an application under 327 IAC 5 for an individual NPDES permit for the construction or modification of a CAFO; or**

- (B) a notice of intent under 327 IAC 15 for general NPDES permit coverage for construction or modification of a CAFO.**

**(d) A person referred to in subsection (c) shall make a reasonable effort to provide notice:**

- (1) to:**

- (A) each person who owns land that adjoins the land on which the CAFO is to be located or modified; or**

- (B) if a person who owns land that adjoins the land on which the CAFO is to be located or modified does not occupy the land, all occupants of the land; and**

- (2) to the county executive of the county in which the CAFO is to be located or modified;**

**not more than ten (10) working days after submitting an**

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application or filing a notice of intent. The notice must be sent by mail, be in writing, include the date on which the application or notice of intent was submitted to or filed with the department, and include a brief description of the subject of the application or notice of intent. The person shall pay the cost of complying with this subsection. The person shall submit an affidavit to the department that certifies that the person has complied with this subsection.

(e) The department shall:

(1) publish under IC 5-3-1 notice of:

(A) an application submitted under:

(i) subsection (a); or

(ii) subsection (c)(2)(A); or

(B) a notice of intent filed under subsection (c)(2)(B); and

(2) publish the notice required under subdivision (1):

(A) in the newspaper of general circulation with the largest circulation in the county in which the confined feeding operation or CAFO is to be located or modified; and

(B) one (1) time not more than ten (10) working days after the date of:

(i) submission of the application; or

(ii) filing of the notice of intent.

(f) The fee for a modification of a confined feeding operation or CAFO is the fee determined by rule by the department as a percentage of the fee established in subsection (a)(5) determined to account for the magnitude of the modification as compared to the magnitude of the original construction."

Page 7, line 1, strike "(c)" and insert "(g)".

Page 10, line 39, after "payable" insert "annually".

Page 10 line 41, delete "indicated number of animals:" and insert "following amount for each category under subsection (b) based on the number of each type of confined animal:

Category A \$100

Category B \$200

Category C \$800

Category D \$1,500

(b) The categories for purposes of subsection (a) are as follows:

	Category A	Category B
Mature cows	300 to 499	500 to 699
Other cattle	300 to 699	700 to 999
Swine at least 55 lbs	600 to 999	1,000 to 2,499
Swine less than 55 lbs	600 to 4,999	5,000 to 9,999

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Chickens	30,000 to 74,999	75,000 to 124,999
Turkeys	30,000 to 39,999	40,000 to 54,999
Ducks	30,000 to 59,999	60,000 to 99,999
Sheep	600 to 4,999	5,000 to 9,999
Horses	not applicable	not applicable
	Category C	Category D
Mature cows	700 to 1,999	at least 2,000
Other cattle	1,000 to 2,999	at least 3,000
Swine at least 55 lbs	2,500 to 7,499	at least 7,500
Swine less than 55 lbs	10,000 to 19,999	at least 20,000
Chickens	125,000 to 399,999	at least 400,000
Turkeys	55,000 to 174,999	at least 175,000
Ducks	100,000 to 299,999	at least 300,000
Sheep	10,000 to 19,999	at least 20,000
Horses	500 to 999	at least 1,000

(c) A confined feeding operation that:

- (1) provides confined feeding for a number of animals less than the minimum number of animals stated in IC 13-11-2-40(1); and
- (2) is a confined feeding operation as a result of meeting the criteria in IC 13-11-2-40(2) or IC 13-11-2-40(3);

is subject to the annual fee prescribed in subsections (a) and (b) for Category A."

Page 10, delete line 42.

Page 11, delete lines 1 through 24.

Page 11, line 25, delete "(b)" and insert "(d)".

Page 11, line 27, delete "Subsection (a)." and insert "This section."

Page 12, between lines 39 and 40, begin a new paragraph and insert:

"SECTION 21. [EFFECTIVE UPON PASSAGE] The department of environmental management shall adopt temporary rules in the manner provided for the adoption of emergency rules under IC 4-22-2-37.1 to establish fees under IC 13-18-10-2(f), as added by this act. A temporary rule adopted under this subsection expires on the earliest of the following:

- (1) The date that the department of environmental management adopts another temporary rule under this SECTION that repeals, amends, or supersedes the previously adopted temporary rule.
- (2) The date that the department of environmental management adopts a permanent rule that repeals, amends, or supersedes the previously adopted temporary rule.
- (3) The date specified in the temporary rule.



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**(4) December 31, 2008."**

Page 12, after line 41, begin a new paragraph and insert:  
**"SECTION 23. An emergency is declared for this act."**  
 Renumber all SECTIONS consecutively.

(Reference is to SB 431 as printed February 21, 2007.)

GARD

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SENATE MOTION

Madam President: I move that Senate Bill 431 be amended to read as follows:

Page 4, line 16, delete "JANUARY 1, 2008]:" and insert "JULY 1, 2007]:".

Page 12, between lines 39 and 40, begin a new paragraph and insert:  
**"SECTION 18. [EFFECTIVE UPON PASSAGE] (a) This SECTION applies notwithstanding the effective date of:**

**(1) IC 13-18-10-1.5 and IC 13-18-10-2.4, both as added by this act; and**

**(2) the amendments under this act to IC 13-11-2-8, IC 13-11-2-191, IC 13-18-10-1, IC 13-18-10-2, IC 13-18-10-2.1, and IC 13-18-10-2.2.**

**(b) The definitions in IC 13-11-2 apply in this SECTION.**

**(c) Subject to subsection (d), the Indiana Code sections referred to in subsection (a), as added or amended by this act, apply to the following confined feeding operations and CAFOs in the same manner those sections would have applied if those sections had been in effect on the date the application for the confined feeding operation or CAFO was submitted to the department of environmental management or the notice of intent for general NPDES permit coverage for the CAFO was filed with the department:**

**(1) A confined feeding operation or CAFO for which a person is required to submit an application to the department for approval under IC 13-18-10-1(a), as amended by this act.**

**(2) A CAFO for which a person is required to submit an application to the department for approval of an individual NPDES permit for the CAFO under 327 IAC 5.**

**(3) A CAFO for which a person is required to file a notice of intent under 327 IAC 15 for general NPDES permit coverage for the CAFO.**



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**(d) Subsection (c) applies only if:**

- (1) an application referred to in subsection (c) was not approved by the department of environmental management before the effective date of this SECTION; or**
- (2) the date of submission of a notice of intent referred to in subsection (c) is on or after the effective date of this SECTION."**

Page 12, after line 41, begin a new paragraph and insert:

**"SECTION 20. An emergency is declared for this act."**

Re-number all SECTIONS consecutively.

(Reference is to SB 431 as printed February 21, 2007.)

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SENATE MOTION

Madam President: I move that Senator Kenley be added as second author and Senator Deig be added as third author of Engrossed Senate Bill 431.

GARD

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred Senate Bill 431, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law and to make an appropriation.

Page 6, between lines 35 and 36, begin a new paragraph and insert:

**"SECTION 11. IC 13-18-10-1.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1.7. (a) Except as provided in subsection (b), a new confined feeding operation, including a CAFO, may not be constructed if any part of a structure that is part of the operation or of a manure treatment facility that is part of the operation would be less than one (1) mile from the boundary**

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of any of the following:

(1) A parcel of land on which any of the following is located:

(A) A school, other than a home school.

(B) A health facility licensed under IC 16-28.

(2) A municipality.

(b) Subsection (a) does not apply to construction that:

(1) is an expansion of an existing confined feeding operation or CAFO; and

(2) is proposed by a person that has not committed a violation of:

(A) environmental management laws; or

(B) a rule adopted by the board;

as determined by the department."

Page 7, line 19, delete "four thousand".

Page 7, line 19, strike "dollars".

Page 7, line 19, delete "(\$4,000)." and insert "**one dollar (\$1).**".

Page 8, delete lines 40 through 42.

Page 9, delete lines 1 through 11.

Page 9, line 12, delete "(f)" and insert "**(e)**".

Page 9, line 13, delete "the fee determined by rule by the department as a" and insert "**one dollar (\$1).**".

Page 9, delete lines 14 through 16.

Page 9, line 17, delete "(g)" and insert "**(f)**".

Page 9, line 36, strike "and".

Page 9, line 39, delete "determination." and insert "determination; and

(3) may not approve the application if the limitation in section 1.7(a) of this chapter applies to the facility that is the subject of the application."

Page 10, line 25, delete "subsections (f) and (g)," and insert "**subsection (f),**".

Page 10, delete lines 36 through 39.

Page 10, line 40, delete "(g)" and insert "**(f)**".

Page 11, line 21, delete "(h)" and insert "**(g)**".

Page 11, line 21, delete "(i)," and insert "**(h),**".

Page 11, line 28, delete "(i)" and insert "**(h)**".

Page 11, line 32, delete "(g)" and insert "**(f)**".

Page 11, line 33, delete "(j)" and insert "**(i)**".

Page 13, line 13, delete "The following fees payable" and insert "**An annual fee of one dollar (\$1) applies to confined feeding operations and CAFOs.**".

Page 13, delete lines 14 through 42.

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Page 14, delete lines 1 through 8.

Page 14, line 9, delete "(d)" and insert "(b)".

Page 14, between lines 12 and 13, begin a new paragraph and insert:

**"(c) The department shall deposit the fee revenue collected under this section in the confined feeding operation inspection fund established by section 2.8 of this chapter.**

SECTION 19. IC 13-18-10-2.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 2.8. (a) The confined feeding operation inspection fund is established to permit the department to inspect confined feeding operations, including CAFOs, to determine compliance with this title.**

**(b) The department shall administer the fund. Money in the fund is annually appropriated to the department for purposes of this chapter.**

**(c) The expenses of administering the fund shall be paid from money in the fund.**

**(d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.**

**(e) Money in the fund at the end of a fiscal year does not revert to the state general fund."**

Page 14, between lines 37 and 38, begin a new paragraph and insert:

**"SECTION 21. IC 13-18-10-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6.5. (a) The department shall establish civil penalty matrices for the following categories:**

- (1) First time violations.**
- (2) Repeat violations.**
- (3) Intentional violators.**

**(b) The civil penalty matrices established in this section must include the following factors to determine each penalty:**

- (1) The magnitude of the violation.**
- (2) The gravity of the effect of the violation.**
- (3) The preventability of the violation.**
- (4) The actions taken to prevent or correct the violation.**

**(c) The range of the penalties for each category of the civil penalty matrix is as follows:**

- (1) First time violations, one hundred dollars (\$100) to twenty-five thousand dollars (\$25,000) for each day of violation.**
- (2) Repeat violations, five hundred dollars (\$500) to fifty**

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thousand dollars (\$50,000) for each day of violation.

(3) Intentional violators, ten thousand dollars (\$10,000) to one hundred thousand dollars (\$100,000) for each day of violation.

SECTION 22. IC 13-18-10-6.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.7. The department shall inspect a confined feeding operation, including a CAFO, at least one (1) time each year if the department determines that the owner or operator has committed a violation of:**

- (1) environmental management laws; or
- (2) a rule adopted by the board."

Page 15, delete lines 24 through 38, begin a new paragraph and insert:

"SECTION 25. IC 15-3-3-17.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 17.5. (a) The state chemist shall adopt rules to establish a training and educational program for manure haulers and applicators concerning the application to land of manure generated from a confined feeding operation (as defined by IC 13-11-2-40), including concentrated animal feeding operations (as defined by IC 13-11-2-38.3).**

**(b) The program established under subsection (a) must include the following topics concerning manure hauling and application:**

- (1) Manure testing.
- (2) Soil testing.
- (3) Transportation.
- (4) Manure application and handling.
- (5) Any other topics determined by the state chemist.

SECTION 26. [EFFECTIVE JULY 1, 2007] **(a) Before November 1, 2007, the state chemist shall submit a report concerning the status of the manure haulers and applicators program under IC 15-3-3-17.5, as added by this act, to the general assembly in an electronic format under IC 5-14-6.**

**(b) This SECTION expires July 1, 2008.**

SECTION 27. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "concentrated animal feeding operation" has the meaning set forth in IC 13-11-2-38.3.**

**(b) As used in this SECTION, "confined feeding operation" has the meaning set forth in IC 13-11-2-40.**

**(c) As used in this SECTION, "executive" has the meaning set forth in IC 36-1-2-5.**

**(d) Before January 1, 2008, the department of agriculture shall**

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**communicate with the executive of each county to:**

**(1) encourage the county to adopt; and**

**(2) assist the county in adopting;**

**an ordinance to address land use and zoning issues in the county related to concentrated animal feeding operations and confined feeding operations.**

**(e) This SECTION expires January 1, 2008."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 431 as reprinted February 26, 2007.)

PFLUM, Chair

Committee Vote: yeas 8, nays 3.

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